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Successor in interest to the FDIC as receiver for
Downey Savings and Loan Association, F.A.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bk. No. 09-12668
)	
JORGE VARGAS ESPARZA,	)	CHAPTER 7
)	
Debtor.	)	R.S. No. DRP – 599
_____)	
	)	MOTION FOR RELIEF FROM
	)	<u>AUTOMATIC STAY</u>
)	
	)	Hearing-
	)	Date : November 12, 2009
	)	Time : 9:00 AM
	)	Place : U.S. Bankruptcy Court
	)	99 South E Street
_____	)	Santa Rosa, California
	)	Courtroom (bkcy)

U.S. Bank, N.A., Successor in interest to the FDIC as receiver for Downey Savings and Loan Association, F.A., its assignees and/or successors, move the Court for relief from the Automatic Stay provided by 11 U.S.C. §362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. §362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may commence and continue all acts necessary to foreclose under the Deed of Trust secured by Debtor's property. Movant seeks

1 relief pursuant to 11 U.S.C. §362(d)(1) for “cause” due to the failure of Debtor to make required
2 payments and pursuant to 11 U.S.C. §362(d)(2) and alleges that, in accordance with the information
3 set forth in the attached Declaration, there is no equity present in the subject real property to justify
4 the continuance of the Automatic Stay. See Stewart v. Gurley 745 F 2d 1194 (9th Cir. 1984).

5
6 Movant is informed and believes that Debtor has claimed an exemption with regard
7 to the subject Property. Based upon this information and Movant's knowledge regarding the
8 outstanding liens against the subject Property, Movant asserts that there is no equity available in the
9 subject Property for the benefit of the estate.

10 In addition, and in the event that this Court continues the Automatic Stay, Movant
11 will seek adequate protection of its secured interest pursuant to 11 U.S.C. §§361 and 362, including
12 a requirement that Debtor reinstates all past arrearages and immediately commence regular monthly
13 payments.

14 Movant alleges that the commercially reasonable value of the subject Property is
15 approximately \$210,000.00, as evidenced by Debtor's Schedules filed with this Court, a copy of
16 which is attached hereto and made a part hereof. Movant requests that this Court take judicial
17 notice of the aforementioned Schedules pursuant to Federal Rule of Evidence Section 201.

18 Movant also seeks an Order terminating and vacating the Automatic Stay for all
19 purposes as it pertains to Movant's interest in the subject real Property, including the prosecution of
20 appropriate foreclosure remedies, without the requirement of further notice or publication, except as
21 may be required by state law.

22 Furthermore, Movant seeks attorneys' fees and costs incurred in bringing this
23 Motion. Movant requests such fees pursuant to the Contract securing Movant's claim or pursuant to
24 11 U.S.C. §506(b). Post-petition attorneys' fees and costs for the within motion may be added to
25 the outstanding balance of the subject Note, pursuant to Travelers Casualty v. Pacific Gas and
26 Electric Co., 549 U.S. _____ (2007), and as allowed under applicable non-bankruptcy law.

27 In addition, Movant requests such further relief as is just.
28

1 This Movant also seeks an Order waiving the 10-day stay described by Bankruptcy
2 Rule 4001(a)(3).

3 This Motion shall be based on these moving papers, as well as the attached
4 Declaration.

5 Responsive pleadings, points and authorities and declarations are not required, but
6 may be filed, pursuant to Bankruptcy Local Rule 4001(f).

7 In the event neither Debtor, the Debtor's Counsel or the Trustee appears at a hearing
8 on this motion, the Court may grant relief from the Automatic Stay permitting moving party to
9 foreclose on the Debtor's property located at **2713 Comanche Street, Santa Rosa, California** and
10 obtain possession of such property without further hearing.

11 WHEREFORE, Movant prays judgment as follows:

12 1.) For an Order granting relief from the Automatic Stay, permitting this Movant to
13 move ahead with foreclosure proceedings under Movant's Deed of Trust.

14 2.) For such Order regarding adequate protection of Movant's interest as this Court
15 deems proper.

16 3.) For attorneys' fees and costs for suit incurred herein.

17 4.) For an Order waiving the 10-day stay described by Bankruptcy Rule 4001(a)(3).

18 5.) For such other relief as this Court deems appropriate.

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20 PROBER & RAPHAEL
21 A LAW CORPORATION

22 DATED: October 13, 2009

23 By /s/ Dean R. Prober Esquire
24 DEAN R. PROBER, ESQUIRE, #106207
25 Attorney for Secured Creditor
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